# Abdullah bin Borhan v Ketua Polis Melaka & Anor

HIGH COURT (MELAKA) — CIVIL SUIT NO 21–14 OF 1997
LOW HOP BING J
30 JULY 2002

*Public Servant — Disciplinary proceedings — Proceeding conducted under Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 — Charge — The word 'wilfully' (or its equivalent in Bahasa Malaysia, 'dengan sengaja') omitted in third charge — Whether charge suffered from a serious and fundamental inadequacy or defect — Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 Schedule 2(7)*

*Public Servant — Dismissal — Dismissal from police force — Failure to surrender firearm to armoury when off-duty — Whether plaintiff was on official duty on 8 February 1996*

The plaintiff, until his dismissal on 6 April 1996, was a detective lance corporal in the Royal Malaysian Police. He was charged of having committed a disciplinary offence for failing to surrender the revolver.38 while he was off duty on 8 February 1996 to the armoury of the Melaka Tengah Police District Headquarters, under Schedule 2(7) of the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 ('the 1970 Regulations'). The plaintiff argued that being a detective, he was given a special permission by the Melaka Tengah District Police Chief to carry the firearm for six months from 13 December 1995 to 12 June 1996 which covered 8 February 1996 when the disciplinary offence was allegedly committed, and that the special conditions only required the plaintiff to bring the firearm to the armoury for inspection every Saturday, which was due only on 10 February 1996. The issue before the court revolved around the construction of the words 'official duty' in para 4 of the special conditions, which in turn led to the question as to whether the plaintiff was on official duty on 8 February 1996.

**Held**, allowing the claim:

(1) The disciplinary offence prescribed in para (7) of the Schedule to the

1970 Regulations with which the plaintiff had been charged must be properly stated in the charge. It consists of two essential elements ie the mens rea which is the guilty mind, or guilty intent reflected or expressed in the word 'wilfully' or 'dengan sengaja' and the actus reus which is the wrongful act of disobeying a lawful order. The two essential elements must be specifically, expressly and unambiguously stated, failing which the charge cannot be said to have disclosed the disciplinary offence at all. However, on the facts, the word 'wilfully' had been omitted in the said charge. The error or omission was fundamental, substantial and material in that the charge did not disclose a disciplinary offence under the said para (7) rendering the conviction and sentence null and void (see para 11).

(2) From the evidence of SP3 and SP4 adduced for the plaintiff, which the defence evidence did not dispute, the plaintiff as a detective was at all times on 24 hours official duty. Although he may be given an off day thereafter, his official duty still subsisted as he was on standby duty. The duty to surrender the firearm to the armoury arises on Saturdays for the purposes of inspection (see para 30).

(3) It was also abundantly clear that para 4 of the special conditions did not specify that the firearm had to be surrendered to the armoury when the plaintiff as a detective travelled outside his area. The fact that on 8 February 1996 the plaintiff was found to be in Kota Bharu and not in Melaka appeared to be irrelevant (see para 32).

(4) On the above specific finding of facts, the court was of the view that on 8 February 1996, when he was off duty, he was, according to his service, on 24 hours official duty by reason of the fact that he was on standby duty and therefore he was not required to surrender the firearm to the armoury (see para 33).

**[Bahasa Malaysia summary**

Plaintif, sehingga tarikh pemecatannya pada 6 April 1996, adalah seorang detektif lans korporal dalam Polis Diraja Malaysia. Plaintif telah dipertuduh dengan melakukan kesalahan disiplin bagi kegagalan menyerahkan revolver.38 semasa plaintif sedang tidak bertugas pada 8 Februari 1996 ke stor senjata api Ibu Pejabat Polis Daerah Melaka Tengah, di bawah Jadual 2(7) Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Mata-Mata) 1970. Plaintif mendakwa bahawa sebagai seorang detektif, beliau telah diberikan kebenaran khas oleh Ketua Polis Daerah Melaka Tengah untuk membawa senjata api untuk tempoh enam bulan daripada 13 Disember 1995 hingga 12 Jun 1996 yang meliputi 8 Februari 1996 apabila kesalahan disiplin yang telah didakwa dilakukan, dan syarat khas tersebut hanya memerlukan plaintif membawa senjata api ke stor

senjata api untuk diperiksa setiap Sabtu, yang hanya akan luput pada 10 Februari 1996. Isu di hadapan mahkamah berkisar berkenaan dengan penggunaan perkataan 'tugas rasmi' di dalam perenggan 4 syarat-syarat khas, yang kemudiannya menjurus kepada persoalan sama ada plaintif sedang menjalankan tugas rasmi pada 8 Februari 1993.

**Diputuskan**, membenarkan tuntutan:

(1) Kesalahan disiplin yang ditetapkan di dalam perenggan (7) Jadual kepada Peraturan-Peraturan 1970 tersebut dengan apa yang telah dipertuduhkan terhadap plaintif mestilah dinyatakan dengan betul di dalam pertuduhan. Ianya terdiri daripada dua elemen penting, mens rea iaitu pemikiran bersalah atau niat bersalah yang mencerminkan atau menjelaskan dalam perkataan 'dengan sengaja' dan actus reus iaitu tindakan salah mengingkari perintah yang sah. Dua elemen yang penting mestilah secara spesifik, jelas dan tidak kabur dinyatakan, apabila gagal, pertuduhan tidak boleh dikatakan telah mendedahkan kesalahan disiplin langsung. Tetapi, atas fakta, perkataan 'dengan sengaja' telah tidak dimasukkan di dalam pertuduhan tersebut. Kesilapan atau gagal memasukkannya adalah teras, penting dan material, oleh itu pertuduhan tidak mendedahkan kesalahan disiplin di bawah perenggan (7) tersebut yang menyebabkan sabitan dan hukuman adalah batal dan tidak sah (lihat perenggan 11).

(2) Daripada keterangan SP3 dan SP4 yang dikemukakan bagi plaintif, yang mana keterangan pembelaan tidak menafikannya, plaintif sebagai seorang detektif pada setiap masa adalah dalam tugas rasmi 24 jam. Walaupun beliau mungkin diberikan satu hari berehat selepasnya, tugas rasminya masih wujud yang mana beliau sedang dalam tugas tunggu sedia. Tugas untuk menyerahkan senjata api ke setor senjata api timbul pada hari Sabtu untuk tujuan pemeriksaan (lihat perenggan 30).

(3) Ianya adalah sungguh jelas bahawa perenggan 4 syarat-syarat khas tidak menyatakan bahawa senjata api hendaklah diserahkan ke setor senjata api apabila plaintif sebagai detektif berada di luar kawasannya. Fakta bahawa pada 8 Februari 1996 plaintif telah ditemui di Kota Bharu dan bukannya di Melaka kelihatan tidak relevan (lihat perenggan 32).

(4) Berdasarkan kepada dapatan fakta spesifik di atas, mahkamah berpendapat bahawa pada 8 Februari 1996, apabila beliau tidak bertugas, atas kepada perkhidmatannya yang bertugas rasmi adalah 24 jam berdasarkan alasan fakta tersebut beliau adalah dalam tugas tunggu sedia dan oleh itu beliau tidak perlu menyerahkan senjata api kepada setor senjata api (lihat perenggan 33).]

**Notes**

For cases on dismissal from police force, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1911–1914.

For cases on proceeding conducted under Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1911–1914.

**Cases referred to**

*Chandler v DPP* [1964] AC 763 (refd)

*Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 (refd)

*R v Bates* [1952] 2 All ER 842 (refd)

*Tan Kok Siong @ Tan Koh Heng v Pendakwa Raya* [1994] MLJU 448 (refd)

*Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261 (refd)

**Legislation referred to**

Federal Constitution arts 5(1), 132

Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 regs 2, 3(1), Schedule para (7)

*G Subramaniam Nair (Maniam Nair & Co) for the plaintiff.*

*Amarjeet Singh (Senior Federal Counsel, Melaka State Legal Advisory Office) for the defendants.*

**Low Hop Bing J:**

PLAINTIFF'S CLAIM

**[1]** In the instant suit, the plaintiff's claim was set out in para 9 of the plaintiff's amended statement of claim, dated 10 August 1998, in the following terms:

(a) a declaration that the plaintiff's dismissal on 6 April 1996 is null and void, unlawful and of no effect and that the plaintiff is still a detective lance corporal in the Royal Malaysian Police;

(b) an account be taken of all the salaries, emoluments and other benefits due to the plaintiff;

(c) damages for wrongful dismissal;

(d) costs; and

(e) interest.

**[2]** It is noteworthy, as has been submitted for the defendants, that although three disciplinary charges were preferred against the plaintiff, the reliefs sought by him relate specifically to a declaration of nullity in respect of the punishment of dismissal which was meted out by first defendant in respect of the third charge only. In the circumstances, the other two charges which resulted in the punishment of 'reprimand' and 'severe reprimand' are rendered irrelevant, in which case it suffices for me to focus this judgment on the legality and validity or otherwise of the punishment of dismissal which is called into question in the instant suit.

## FACTS OF THE CASE

**[3]** The uncontroverted relevant facts are short and simple. The plaintiff, until his dismissal on 6 April 1996, was a detective lance corporal in the Royal Malaysian Police. He was called up to attend disciplinary proceedings held on the aforesaid date and presided over by first defendant, the Melaka State Police Chief, as the adjudicating officer.

**[4]** As alluded to above, three disciplinary charges were preferred against the plaintiff, but since only the third charge is relevant, it is reproduced as follows:

> PERTUDUHAN KETIGA
>
> Bahawa anda, Encik Abdullah bin Borhan, L/Kpl/D 102224, anggota detektif, pada ketika itu berkhidmat di Cawangan Siasatan Jenayah Ibu Pejabat Polis Daerah Melaka Tengah, dalam Kontinjen Melaka, pada 8/2/96 didapati telah tidak menyerahkan senjata api jenis 'Revolver.38 Spl. 2' No J843207 yang anda ambil pada 3/2/96 ke Stor Senjata Api IPPD Melaka Tengah sebagaimana semakan yang dibuat dalam catitan Pol 74C Stor Senjata Api IPPD Melaka Tengah Bil 1363 yang mana pada 8/2/96 anda kelepasan tugas, dengan ini anda telah engkar arahan HT KPN C.111 para 5 dan Arahan Ketua Polis Daerah Melaka Tengah dalam Syarat-Syarat Khas Pengeluaran Senjata Api yang anda tandatangani pada 1/12/95, maka dengan ini anda telah melakukan satu kesalahan tatatertib di bawah Jadual 2(7) TIDAK MENURUT PERINTAH YANG SAH dalam Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Mata-Mata) 1970 dan PU(A) 86 bertarikh 24/2/70 dan PU(A) 56 (Pindaan) bertarikh 8/2/84 dan anda boleh dihukum di bawah peraturan-peraturan yang sama.
>
> [Translation:
>
> THIRD CHARGE
>
> That you, Encik Abdullah bin Borhan, L/Kpl/D 102224, a detective then serving in the Criminal Investigation Branch, Melaka Tengah Police District Headquarters, in the Contingent of Melaka, on 8/2/96 was found to have not surrendered the type of firearm 'Revolver.38 Spl. 2' No J843207, which you took on 3/2/96, to the Armoury of the Melaka Tengah Police District

Headquarters, while a check conducted on the endorsement in Pol74C in the Armoury of the Melaka Tengah Police District Hq No 1363 revealed that on 8/2/96 you were off duty, and you have hereby breached the Order HT KPN C.111 para 5 and the order of the Melaka Tengah District Police Chief in the Special Conditions for the Issue of Firearms which you signed on 1/12/95, and you have hereby committed a disciplinary offence under Schedule 2(7) DISOBEYING A VALID ORDER in the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 and PU(A) 86 dated 24/2/70 and PU(A) 56 (Amendment) dated 8/2/84 and you may be punished under the same regulations.]

**[5]** By way of observation, it must be stated that the above translation is and must necessarily be based on the sequence of the words and language used in the Bahasa Malaysia version, which in my view could have demonstrated a higher standard of drafting skill and technique normally manifested in the various types of charges drafted by experienced members of the Royal Malaysian Police, in order to make the charge in question faultless and flawless.

## SUBMISSIONS BY COUNSEL AND DECISION OF THE COURT

*Disciplinary charge: any defect?*

**[6]** Paragraph 8(j) of the plaintiff's amended statement of claim avers, inter alia, that the third charge is not valid. Encik Maniam Nair, learned counsel for the plaintiff, submitted that the third charge is baseless and defective. Encik Amarjeet Singh, learned senior federal counsel for the defendants, contended that in the third charge, the breach of discipline against the plaintiff is 'wilfully disobeying a lawful order' and that it is a disciplinary offence under para (7) in the Schedule to the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 ('the 1970 Regulations').

**[7]** After carefully considering the aforesaid respective submissions, I am of the opinion that the third charge, as observed above, has not been happily worded, by reason of the fact that the allegations levelled against the plaintiff have merely been conveyed and expressed partially and inadequately.

**[8]** Regulation 2 of the 1970 Regulations provides for disciplinary offences and specific punishments in the following words:

2 Any officer who is found guilty of a disciplinary offence as specified in the Schedule hereto shall be liable to any of the punishments as specified in that Schedule.

**[9]** The Schedule to the 1970 Regulations contains various disciplinary offences and the disciplinary offence with which the plaintiff has been charged is contained in para (7) thereof, the relevant portion of which reads 'wilfully disobeys any lawful order', as has been correctly submitted by the learned senior federal counsel. With the utmost respect to the original draftsman of the third charge, it is plain to me that the said charge suffers from a serious and fundamental inadequacy or defect in that the word 'wilfully' (or its equivalent in Bahasa Malaysia, 'dengan sengaja') has been omitted in the charge.

**[10]** The disciplinary offence contained in para (7) with which the plaintiff has been charged must be properly stated in the third charge. Regulation 3(1) of the 1970 Regulations sets out this mandatory requirement in the following words:

> Disciplinary charges.
>
> 3(1) A charge shall be framed in accordance with the offence as prescribed in the Schedule. The charge shall describe the offence briefly and identify the officer with the unlawful act or omission charged.

**[11]** The disciplinary offence prescribed in para (7) of the Schedule to the 1970 Regulations consists of two essential elements viz the mens rea which is the guilty mind, or guilty intent reflected or expressed in the word 'wilfully' or 'dengan sengaja' in Bahasa Malaysia and the actus reus which is the wrongful act of disobeying a lawful order. To constitute a proper charge under para (7), these two essential elements must be specifically, expressly and unambiguously stated, failing which the charge cannot be said to have disclosed the disciplinary offence at all and even if, as in the instant case, the plaintiff has pleaded guilty to the charge, the conviction recorded thereon against him and the sentence of dismissal meted out would nevertheless be null and void, unlawful and of no legal effect whatsoever.

**[12]** The disciplinary offence in question is in my view identical to a criminal offence and the mandatory procedural requirements contained in reg 3(1) of the 1970 Regulations must be strictly observed. A cardinal principle of criminal law has found expression in the time honoured Latin legal maxim, *actus non facit reum, nisi mens sit rea* ie, the intent and the act must both concur to constitute the crime. The words 'wilfully disobeys any lawful order' prescribed in para (7) do not admit of a disciplinary offence of absolute or strict liability. 'wilfully' or 'dengan sengaja' must be incorporated in the charge in order to make it a complete charge containing the disciplinary offence prescribed in para (7).

**[13]** I am of the view that the procedural requirements in drafting a charge meant for a criminal trial would apply with equal force to a disciplinary charge such as in the instant case because both of them share the common demoninator ie, penal consequences. There is therefore enormous wisdom in enacting the aforesaid reg 3(1) in the 1970 Regulations.

**[14]** On my part, it is necessary and advisable to hark back to first principles governing the drafting of charges with particular reference to a disciplinary offence. The crucial part of the charge herein merely states that the plaintiff 'TIDAK MENURUT PERINTAH YANG SAH' or disobeying a lawful order. In my view, the charge appears to be out of focus because the disciplinary offence created under the said para (7) is 'wilfully disobeying any lawful order' and so the word 'wilfully' is of fundamental importance. It is trite law that the charge in question must be precisely formulated to include the specific accusation against the plaintiff who has the right to know and must have notice of the very nature of the charge at the first opportunity, so that the plaintiff is forewarned with clarity and certainty the essential elements or ingredients against him in order to ensure that he can be forearmed in his defence for the purpose of directing all the evidence exclusively to the specific charge.

**[15]** In the instant case, the error or omission is fundamental, substantial and material in that, as stated above, the charge does not disclose a disciplinary offence under the said para (7).

**[16]** The salutary practice of drafting proper charges eg, for a criminal trial and, in my view, by analogy to disciplinary offences, have been consistently and strictly applied by our courts, see *Tan Kok Siong @ Tan Koh Heng v Pendakwa Raya* [1994] MLJU 448, and the cases cited therein.

**[17]** In my considered view, there is no doubt that the charge in question is so defective as to render the conviction and the sentence null and void. This ground alone would have expeditiously disposed of the suit herein without further ado. Be that as it may, I shall nevertheless proceed to consider the suit on its merits, on the assumption that the disciplinary charge has incorporated the word 'wilfully' or 'dengan sengaja' in Bahasa Malaysia.

WILFULLY DISOBEYING A LAWFUL ORDER

**[18]** The orders which the plaintiff was alleged to have disobeyed as contained in the third charge were HT KPN C.111 para 5 and the Melaka Tengah District Police Chief's directive contained in the special conditions for the issue of firearms signed by the plaintiff on 1 December 1995 ('special conditions').

**[19]** It was argued for the plaintiff that the plaintiff being a detective was given a special permission by the Melaka Tengah district police chief to carry firearms for six months from 13 December 1995 to 12 June 1995 which covered 8 February 1996 when the disciplinary offence was allegedly committed, and that the special conditions only required the plaintiff to bring the firearms to the armoury for inspection every Saturday, which was due only on 10 February 1996.

**[20]** For the defendants, it was contended that the plaintiff has breached the said orders, in particular condition 4 of the special conditions and that there was no express permission for the plaintiff to carry firearms while not on duty, since the issuance of firearms to the plaintiff for the duration of six months was for his official use.

**[21]** Having considered the aforesaid submissions, it is clear to me that the breaches alleged in the third charge against the plaintiff were in respect of the orders viz. HT KPN C.111 para 5 and not para 4.2 of the same, which has never been stated in the third charge at all but nevertheless strenuously relied upon by the learned senior federal counsel. The other allegation contained in the third charge was the breach of the order in the special conditions. The fundamental importance of the aforesaid orders would merit reproduction as follows:

> HT KPN C.111 para 5
>
> Order for 3. It is the responsibility of detectives. Crime and Special Branch Officers to decide when detectives under their command are required to be in permanent personal possession of a revolver or pistol and ammunition. Such decision will be recorded in writing and the officer will also issue orders to ensure safe custody and care and cleaning of the weapon and its presentation each Saturday morning for examination and checking against the Arms In-and-Out Register in accordance with HT KPN BHG C.111.
>
> Special conditions:
>
> SYARAT SYARAT KHAS
>
> Saya D/L/Kpl 102224 Abdullah bin Borhan mengesahkan dan sedia mengikut arahan seperti yang tersebut dibawah ini:
>
> (1) Saya adalah mahir menggunakan senjata api dan peluru tersebut yang dibekalkan pada saya.
>
> (2) Saya akan menggunakan senjata api dan peluru tersebut untuk tujuan tugas rasmi sahaja.
>
> (3) Saya akan menentukan keselamatan, kebersihan dan kebaikan senjata api dan peluru tersebut.
>
> (4) Saya akan menyerahkan senjata api dan peluru tersebut apabila saya tidak bertugas secara rasmi.

(5) Saya akan membawa senjata api dan peluru tersebut ke Setor Senjata pada setiap pagi Sabtu untuk diperiksa.

Tandatangan Pengguna Senjata.

(Abdullah B Borhan)

[Translation:

I, D/L/Kpl 102224 Abdullah bin Borhan confirm and will obey the order as stated below:

(1) I am competent in using the said firearm and ammunition supplied to me.

(2) I shall use the said firearm and ammunition for the purpose of my official duty only.

(3) I shall ensure the safety, cleanliness and good conditions of the said firearm and ammunition.

(4) I shall surrender the said firearm and ammunition whenever I am not on official duty.

(5) I shall present the said firearm and ammunition to the armoury each Saturday morning for examination.]

**[22]** In my considered opinion, notwithstanding the use of the words 'Order for Detectives' in the marginal note to HT KPN C.111 para 5, the real intention that appears in the paragraph proper is to impose on Crime and Special Branch officers the responsibility:

(1) to decide when detectives under their command are required to be in permanent personal possession of eg, a revolver and ammunition;

(2) to record such decision in writing; and

(3) to issue orders to ensure safe custody and care and cleaning of the weapon and its presentation each Saturday morning for examination and checking against the Arms In-and-Out Register in accordance with HT KPN C.111.

**[23]** I have *ex abundante cautela* repeatedly read the said para 5, as it is one of the crucial allegations in the charge against the plaintiff, for the purpose of determining if the said para 5 contains any order, directly or indirectly, expressly or by necessary implication, which is addressed to or directed at the plaintiff as a detective, in which case, the plaintiff has a duty to obey. As adumbrated above, the said para 5 contains orders to the Crime and Special Branch Officers to carry out the responsibility enumerated earlier. The marginal note 'Orders for Detectives' is not part of para 5 and so cannot

control or contradict the meaning or construction of the express and clear language used in HT KPN C.111 para 5. It is actually misleading if it were to be used as an intrinsic aid to construction: *R v Bates* [1952] 2 All ER 842; *Chandler v DPP* [1964] AC 763. In any event, even if I were to treat the said marginal note as part of para 5 and consider it as an aid to construction, its function is to serve as a brief guide to the content: per Abdoolcader SCJ in *Foo Loke Ying v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35.

**[24]** The real intention as expressed in the said para 5 can only be ascertained and determined by reference to the paragraph proper ie, the content thereof and not elsewhere. In the circumstances, such as the absence of any order to the plaintiff as a detective in the instant case, there is nothing in the said para 5 for the plaintiff to obey and, by analogy, to disobey.

**[25]** On the issue of the alleged breach by the plaintiff of the order contained in the special conditions, it was contended for the defendants that the plaintiff has breached para 4 of the special conditions in that the plaintiff has failed to surrender the said firearm and ammunition when he was not on official duty.

**[26]** In my view, the issue before me revolves around the construction to be placed on the words 'official duty' in para 4 of the special conditions, which in turn leads to the question as to whether the plaintiff was on official duty on 8 February 1996. In order to arrive at a proper conclusion on this issue, I shall refer to the evidence adduced for the plaintiff. SP3 ASP Kamarulzaman bin Hj Jaafar from Gua Musang Police District Headquarters gave evidence for the plaintiff. The witness was in February 1996 the area inspector of Batu Berendam Melaka. Under cross-examination by the learned senior federal counsel, he testified as follows:

> Sepanjang tahu saya semua anggota polis dianggap bertugas 24 jam terutama anggota detektif akan menjalankan tugas pada bila-bila masa walaupun tidak disenaraikan dalam jadual tugas.
>
> [Translation:
>
> So far as I know, all police personnel are deemed to be on 24 hours duty, especially detectives, who shall carry out duties at any time although not listed in the schedule of duties.]

**[27]** Further, in re-examination by the plaintiff's learned counsel, SP3 said:

> Pada kelazimannya seorang anggota yang bertugas 24 jam ia akan diberikan kelepasan tugas tetapi bergantung kepada apa-apa arahan semasa.

[Translation:

Normally, a member (of the police force) on 24 hours duty will be given off duties but depending on current instructions].

**[28]** SP4, detective sergeant Mohd Azmi bin Rashid testifying for the plaintiff said he was at the material time attached to the same police district as the plaintiff. In February 1996, he was the chief detective (*ketua detektif*). The relevant portion of his evidence-in-chief shows as follows:

Apabila seorang anggota detektif bertugas 24 jam pada hari keesokan beliau diberi kelepasan 24 jam. Dia tidak perlu datang ke pejabat tetapi masih dalam tugas rasmi. Sekiranya diperlu akan dipanggil juga untuk bertugas. Beliau dianggap dalam stand-by.

Sebagai Detektif/Sgt saya juga mempunyai kelulusan khas untuk menyimpan senjata selama 6 bulan. Hanya pada hari Sabtu saya perlu serahkan senjata kepada armourer untuk diperiksa. Saya dan lain-lain detektif tidak perlu menyerah balik senjata semasa off-guard, iaitu semasa hari-hari kelepasan. Saya setuju hanya semasa ambil cuti rehat rasmi perlu menyerah balik senjata. Hari kelepasan bukan cuti rehat rasmi.

[Translation:

Whenever a detective is on 24 hours duty, he is given 24 hours off the next day. He is not required to come to office but is still on official duty. If required, he shall also be called for duty. He is deemed on stand-by.

As a Detective/Sgt, I also have special permission to keep a firearm for 6 months. I have to surrender the firearm to the armourer for inspection on Saturdays only. I and other detectives are not required to surrender the firearm when off-guard ie, on off days. I agree that it is necessary to surrender the firearm on official vacation leave only. An off-day is not official vacation leave.]

**[29]** Under cross-examination, SP4 said that on an off-day, a detective is not allowed to take the firearm outside the area without permission and agreed that when a detective wishes to go outside his area on an off-day, he must surrender the firearm. However, under re-examination, he added that the special conditions did not state that on an off day the firearm has to be surrendered when outside his area.

**[30]** From the evidence of SP3 and SP4 adduced for the plaintiff, which the defence evidence did not dispute, it is my specific finding that the plaintiff as a detective is at all times on 24 hours official duty. Although he may be given an off day thereafter, his official duty still subsists as he is on stand-by duty. The duty to surrender the firearm to the armoury arises on Saturdays for the purposes of inspection.

**[31]** In particular reference to the service of detectives, the undisputed evidence establishes that in the case of 'kelepasan tugas' ie, an off-day or off-duty day as contained in the third charge, the requirement to surrender the firearm does not arise.

**[32]** It is also abundantly clear that para 4 of the special conditions did not specify that the firearm had to be surrendered to the armoury when the plaintiff as a detective travelled outside his area. The fact that on 8 February 1996 the plaintiff was found to be in Kota Bharu and not in Melaka appears to be irrelevant as the third charge did not make any reference to the plaintiffs visit to Kota Bharu on 8 February 1996. Further, para 4.2 of the HT KPN C.111, which the defendant now alleges the plaintiff has disobeyed, cannot have any application to the third charge, simply because the third charge did not state that the plaintiff has disobeyed para 4.2, ibid.

**[33]** On the above specific finding of facts, I am of the view that on 8 February 1996, when he was off duty, he was, according to his service, on 24 hours official duty by reason of the fact that he was on stand-by duty and therefore he was not required to surrender the firearm to the armoury.

**[34]** The sentence of dismissal imposed on the plaintiff in the disciplinary proceedings would warrant the application of art 5(1) of the Federal Constitution. While art 132 of the Federal Constitution has been referred to by both the learned counsel, art 5(1) thereof seems to have escaped the attention of both sides of the Bar table. The fundamental liberty enshrined in art 5(1) expressly provides that no person shall be deprived of his life or personal liberty save in accordance with law.

**[35]** The meaning of the word 'life' in art 5(1) has been judicially discussed and ascertained in the majority judgment of the Court of Appeal in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261, at p 287A. Gopal Sri Ram JCA, in delivering the majority judgment referred to several authorities from such jurisdictions as the United States and India, gave a broad and liberal meaning to the word 'life', which His Lordship held is not confined to mere existence, but ' incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these are the right to seek and be engaged in lawful and gainful employment it encompasses the right to continue in public service subject to removal for good cause by resort to a fair procedure' (at p 288H–I). Therefore there is no doubt that art 5(1) requires that strict compliance with procedural law and substantive law must be observed.

**[36]** Since the plaintiff has not breached the order contained HT KPN C.111 para 5, the third charge against the plaintiff resulting in his conviction and the sentence of dismissal cannot be legally sustained.

CONCLUSION

**[37]** In the light of the above finding, I do not feel the necessity to consider the respective submissions of the learned senior federal counsel and the plaintiff's learned counsel on other grounds, except to commend them for the inexhaustible initiative and enormous effort expended by them in undertaking, their getting-up.

**[38]** On the aforesaid grounds, I allow the plaintiff's claim in terms of prayers (a), (b), (d) and (e) interest at 8%pa from the date of judgment to the date of realisation.

**[39]** Prayer (c) is not allowed as it is in practical terms part and parcel of prayer (b) and hence there shall be no duplicity thereof. In the circumstances, prayer (c) is dismissed with costs.

*Plaintiff's claims allowed.*

Reported by Ashgar Ali Ali Mohamed